

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

LANNA W.,

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. 2001010398

**DECISION**

This matter came on regularly for hearing before Ralph B. Dash, Administrative Law Judge with the Office of Administrative Hearings, on April 12, 2001, at Torrance, California.

Paul and Jan Wallend, Claimant's representatives, represented Claimant, Lanna W.

Dolores Burlison, Manager of Rights Assurance, represented Harbor Regional Center ("HRC").

Documentary evidence and oral argument having been received and the matter submitted, the Administrative Law Judge makes the following Findings of Fact, Legal Conclusions, and Orders, as follows:

**ISSUES PRESENTED**

1. Are Functional Communication and Compliance Training behavior modification modalities that would benefit claimant?
2. If so, is HRC required to provide such service to claimant.

## **FACTUAL FINDINGS**

1. Lanna W. is soon to be 5 years old and has been a client of HRC who receives several different types of services and had received Early Intervention Services. She has a diagnosis of Mild Mental Retardation, although that diagnosis is disputed. In any event, there is no question she is entitled to receive services from HRC.

2. Lanna was adopted from a Bulgarian orphanage at the age of 18 months and weighed only 15 pounds. Lanna experienced early childhood "environmental deprivation" and experienced "developmental delays" because of this. In fact, two psychologists have indicated Lanna suffers from "global developmental delays" attributed to deprivation from birth to adoption. The adoptive parents were warned of these developmental delays only shortly before the adoption. However, the record made it clear Lanna was adopted into a loving, supportive and enriched environment by devoted parents who are intensely involved in her care and well being.

3. Lanna exhibited significant difficulties over toilet training and related events. In fact, even when no longer age appropriate, Lanna wore diapers all the time. HRC recommended and provided 40 hours of parent training to help Lanna in this area. The parents actively participated and were said to "have done a good job following through with the recommendations given. They learned basic principles of behavior modification and Lanna has made considerable progress. However [Lanna] continues to display difficulty with independent toileting skills."

4. Lanna's inappropriate behaviors manifest themselves at home, school and on social outings, whether with her parents or other care providers, and go far beyond simple potty training. She has become more "defiant", refusing to comply with simple requests, crying and whining persistently. She will request to use the bathroom 20 times per day, and remain on the toilet for long periods of time. Additionally, she becomes agitated when others use the bathroom, whether at home, at school, or on social outings. This agitation can lead not just to tantrums but to Lanna also physically attacking others. She also demonstrates a significant amount of self-stimulation, in the form of repeated vocalization and body rocking. This, along with her preoccupation with bathroom routines, limits her peer relationships and coupled with her communications impairments, fit Lanna within the syndrome of a pervasive developmental disorder. Lanna's parents brought all of the foregoing to HRC's attention on numerous occasions and sought additional help. Even the therapist who worked with Lanna and her parents during the 40 hours of training indicated that more intensive one-to one therapy directly with Lanna was needed. The evidence was uncontroverted that "left unchecked, her noncompliance and other challenging behaviors will likely worsen if not addressed intensively." This last statement is from a report prepared by Dr. William Frea, clinical psychologist, of Autism Spectrum Therapies, to whom Lanna had been referred, apparently, by her school district. The report is dated March 8, 2001, and was made available to HRC before the within hearing. At the hearing, HRC's representative

indicated the report from Dr. Frea had been reviewed by the HRC psychologist and the "informal" opinion from HRC was that there was nothing further HRC would do, except provide an already offered additional 20 hours of parent training, which even though that was "outside of HRC's" policy", and also would clearly be of no use or benefit in this unique case.

5. Despite the mountain of evidence compiled by the parents and made available to HRC, claimant's request for additional services was repeatedly denied. Each denial was accompanied by a statement from HRC that "toileting issues" were to be handled in accordance with HRC's written policies as to how they should be dealt with" and HRC was not going to deviate from its policy. In fact, HRC's "transaction log" documents Lanna's increasing difficulties and the numerous requests for additional services, but often referred to the requests as deviations from policy, as though "policy deviation" was so abhorrent as to offend all notions of decency and propriety. In fact, taken as a whole, the evidence clearly indicated that HRC placed it's own written policies against the best interests of Lanna. Their refusal to provide additional services based on that rationale is indefensible.

6. Dr. Frea's report is extensive, well reasoned and uncontroverted. It is appropriate to quote from it here at length:

Lanna will need to learn how to expand her repertoire of attention seeking behaviors. As she develops peer related social skills, it will become easier for her to tolerate less adult attention. Initially, specific communication goals will need to be agreed upon and taught. It will also require that challenging behaviors be ignored after this training begins, for her to best differentiate what behaviors to use for attention. As Lanna learns to use appropriate attention seeking skills the frequency and intensity of attention given can gradually be faded.

The method used to teach the above skills is Functional Communication Training. Over 100 research articles have documented its effectiveness. It typically combines a number of procedures including differential reinforcement, and generalization procedures. In addition to this highly focused behavioral goal Lanna should have a range of functional communication goals. These should build on an expectation for her to communicate to adults and peers. She should be expected to ask for the things she wants. She should be prompted to use appropriate greetings, requests, and refusals. And most importantly, her language goals should be intentionally imbedded within and across her daily routines....

Lanna must have a program for compliance. This should be implemented in the home and school. This will involve one-to-one training, and will take approximately 3 to 4 weeks of intensive work. Compliance training has long had a high rate of success. Lanna is currently going through a 'no' stage. She is exploring more complex social interactions, and these need to be expanded to include the social and communication goals mentioned above. However,

left unchecked, her non-compliance and other challenging behaviors will likely worsen if not addressed intensively at this time. Her compliance training should begin only after a functional communication training program has been started. (emphasis in original)

7. Claimant timely appealed HRC's denial and all jurisdictional requirements have been met.

### **CONCLUSIONS OF LAW**

1. Claimant is entitled to services from HRC, by reason of Finding 1 and Welfare and Institutions Code Section 4512 (a).

2. Jurisdiction to hear this matter exists under Welfare and Institutions Code Section 4710.5.

3. It was established by a preponderance of the evidence that Claimant is entitled to receive, at the expense of HRC, all behavior modification modalities set forth in the report of Dr. William Frea, Exhibit "10" to the within hearing, not otherwise provided by Lanna's school district.

4. HRC is required to provide such behavior modification to Claimant as set forth in Dr. Frea's, under Welfare and Institutions Code Section 4648 (a)(1), by reason of Findings 2 through 6.

#### **Discussion and Rationale:**

In this case, HRC has clearly lost sight of its Legislative mandate. Welfare and Institutions Code Section 4685 (b) provides in pertinent part, "It is the intent of the Legislature that regional centers provide or secure family support services that do all of the following:...Be flexible and creative in meeting the unique and individual needs of families as they evolve over time." By placing Claimant in a "policy box" of their own making, HRC has failed in this Legislative mandate. Just because Claimant's needs do not fit HRC's "policy", is no reason (but the only one given) for a denial of services.

Generally, the State of California prohibits the delegation of legislative power, particularly to a non-elected body such as a regional center. This doctrine rests upon the premises that (1) the State Legislature must resolve fundamental policy issues and not delegate that function; and (2) the power to change the law is necessarily legislative in character, and is vested exclusively in the legislature and cannot be delegated by it. Simi Valley Recreation and Park District v. Local Agency Formation Com., 51 Cal. App. 3d 648, 669, (1975). The doctrine which prohibits delegation of legislative power is not violated if the Legislature makes the fundamental policy decision and leaves to some other body, either public or private (such as a regional center), the task of achieving the goals envisioned in the legislation. Ibid at page 670. See also Kugler v. Yocum 69 Cal. 2d 371 (1968).

Accordingly, once the Legislature has declared a policy and fixed a primary standard (as it did in Welfare and Institutions Code Section 4685 (b)) it may confer upon executive or administrative officers the power to "fill up the details" by prescribing administrative rules and regulations to promote the purposes of the legislation and carry it into effect. Simi, supra. See also First Industrial Loan Company v. Daugherty, 26 Cal. 2d 545, 549 (1945). Consequently, when the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine against delegation of legislative power. Kugler, supra at pages 375-377.

Because legislative policy determinations cannot be delegated to a non-legislative board (See Clean Air Constituency v. California State Air Resources Board, 11 Cal. 3d 801 (1974) and San Francisco Fire Fighters v. City and County of San Francisco, 68 Cal. App. 3d 899 (1974)), administrative regulations that alter or amend the statute or enlarge or impair its scope are void. See Rosas v. Montgomery 10 Cal. App. 3d 77 (1970). Even if the statute is construed as empowering the non-legislative body to exercise judgment of a high order in implementing the legislative policy, it does not have unrestricted powers. See CEED v. California Coastal Zone Conservation Commission, 43 Cal. App. 3d 306, 327 (1974). It is a limited delegation of authority. HRC can only exercise the powers expressly conferred upon it, or powers which are necessarily inferred therefrom. The policies promulgated by HRC under this limited delegation must be applied within the authority given it. See generally, Chavez v. Civil Service Commission, 86 Cal. App. 3d 324, 327-328, (1978). Policies adopted by HRC directly affect consumers; thus there is a danger that HRC may misuse its policy making authority. Accordingly, the law presumes stringent standards to contain and guide the exercise of such policies. Allen v. California Board of Barber Examiners, 25 Cal. App. 3d 1014, 1018 (1972).

HRC presumptively exercises its power in conformity with the requirements of the law. If it acts unfairly, the law presumes the fault lies with HRC and not the statute empowering it. Constitutional guarantees against arbitrary and discriminatory action are read into the law. See generally Butterworth v. Boyd, 12 Cal. 2d 140, 149 (1938).

It is a fundamental rule of statutory construction that the intent of the enacting authority should be determined so as to give effect to the purpose of the law. Chavez, supra at page 330. If possible, effect should be given to the enacted provision as a whole so that no part of it will be useless or meaningless. Id. Clearly, Welfare and Institutions Code Section 4685 (b) would be meaningless were HRC to deny services because of HRC's own policies, when the Legislature has mandated that all regional centers "be flexible and creative in meeting the unique and individual needs of families as they evolve over time."

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## **ORDER**

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. The claim of Lanna W. for behavioral modification therapy, of the type and nature described in the report of Dr. Frea, is granted.
2. HRC shall provide an authorized vendor or vendors for all of such services, not otherwise provided by Claimant's school district, immediately.

## **NOTICE**

**THIS IS THE FINAL ADMINISTRATIVE DECISION IN THIS MATTER, AND BOTH PARTIES ARE BOUND BY IT. EITHER PARTY MAY APPEAL THIS DECISION TO A COURT OF COMPETENT JURISDICTION WITH NINETY (90) DAYS OF THIS DECISION.**

Date: April , 2001

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RALPH B. DASH  
Administrative Law Judge  
Office of Administrative Hearings